

STATE OF INDIANA            )  
                                  ) SS: IN THE MARION SUPERIOR COURT  
COUNTY OF MARION        ) CIVIL ROOM 4  
                                  ) CAUSE NO. 49D04-9910-CP-001430

- GOLDEN RULE INSURANCE COMPANY,        )  
    An Illinois Corporation,                )  
  )  
    Plaintiff,                                )  
  )  
    v.   )  
  )  
SALLY McCARTY, Commissioner of the Indiana    )  
Department of Insurance, State of Indiana,    )  
  )  
    Defendant.                                )

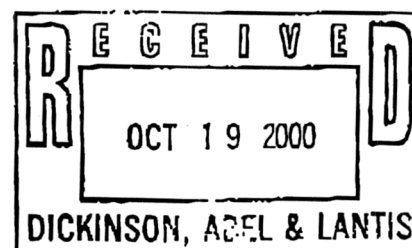
**FILED****OCT 16 2000***John M. Taylor*  
CLERK OF THE  
MARION CIRCUIT COURT

FINDINGS OF FACT CONCLUSIONS OF LAW AND JUDGMENT

This matter came before the Court on July 31, 2000, for argument on Golden Rule Insurance Company's Motion for Judgment on the Evidence. Golden Rule was represented by Edgar Lantis; Commissioner Sally McCarty was represented by Terry G. Duga, Deputy Attorney General. The Court has considered the argument and briefs presented and, being duly advised in the premises, now finds as follows:

Findings of Fact

1. Golden Rule is an Illinois corporation with its executive offices in Indianapolis, Indiana.
2. It is licensed to provide accident and sickness insurance in the State of Indiana.
3. Golden Rule issues certificates of accident and sickness insurance to residents of Indiana pursuant to a group policy issued and delivered in the State of Illinois.



4. The group policy was issued and delivered in the State of Illinois to an association known as the Federation of American Consumers and Travelers ("FACT").

5. On or about August 15, 1999, Golden Rule issued a certificate, pursuant to its group policy issued and delivered to FACT, to Jeffrey T. Woodall, a resident of Bremen, Indiana.

6. That certificate was subject to three (3) exclusionary riders. Two (2) riders were for indefinite durations and one rider was for a two (2) year duration.

7. On March 5, 1999, the Commissioner, through her agent, informed Golden Rule that indefinite exclusions violated Ind. Code § 27-8-5-19(c)(5).

8. On August 9, 1999, the Commissioner issued Bulletin 96 entitled "Long Term, Indefinite or Permanent Waivers of Coverage Impermissible."

9. The Bulletin explained that "Ind. Code § 27-8-5-19(c)(5) provides, in general, that exclusions or limitations of coverage for preexisting conditions may apply only to a disease or condition for which treatment was received during the six (6) months before coverage begins, and may not apply to a loss or disability incurred more than twelve (12) months after coverage begins (eighteen (18) months for a late enrollee). Other exclusions or limitations in the policy may apply only to services specifically excluded from the policy's benefits for all certificate holders."

10. Golden Rule's use of exclusionary riders with durations in excess of twelve (12) months is part of a scheduled market conduct examination of Golden Rule.

11. Before 1991, Golden Rule issued and delivered individual accident and sickness insurance policies to Indiana residents.

12. Currently, Golden Rule does not issue and deliver individual accident and sickness insurance policies in Indiana, except for Medicare supplemental and short-term insurance.

13. Golden Rule has existing individual accident and sickness insurance policies in force in Indiana which were previously issued in Indiana.

14. Before issuing or delivering any individual accident and sickness insurance policies in Indiana, Golden Rule filed the policies and initial premium rates with, and procured the approval of, the Commissioner in accordance with Ind. Code ¶ 27-8-5-1

15. Golden Rule asserts that revised renewal rates applicable to in-force individual accident and sickness policies must be filed with, but do not require the prior approval of, the Commissioner.

16. The Commissioner's position is that the rate changes are a part of the policy which are subject to the approval of the Commissioner pursuant to Ind. Code ¶ 27-8-5-1.

17. All findings of fact may be deemed conclusions of law.

### Conclusions of Law

#### A. Standard of Review

1. A motion for judgment on the pleadings may only be granted where there are not genuine issues of material fact. *Cristiani v. Clark County Solid Waste Management Dist.*, 675 N.E.2d 715, 717 (Ind. Ct. App. 1996); *Gregory and Appel, Inc. v. Duck*, 459 N.E.2d 46, 49 (Ind. Ct. App. 1984).

2. The motion may be granted only if it is clear from the pleadings that the non-moving party cannot in any way succeed under the operative facts and allegations therein. *Rivera ex rel. Rivera v. City of Nappanee*, 704 N.E.2d 131, 132 (Ind. Ct. App. 1998).

3. The court accepts as true the well-pleaded material facts alleged in the complaint, and its review is confined to information in the pleadings. *Rivera, supra*, 704 N.E.2d at 132.

4. A party moving for judgment on the pleadings admits for purposes of the motion all facts well pleaded and the untruth of any of his own allegations which have been denied. *Mirka v. Firfield of America, Inc.*, 627 N.E.2d 449, 450 (Ind. Ct. App. 1994).

5. All reasonable intendments and inferences are to be taken against the movant. *Id.*

6. Interpreting the language of a statute is the responsibility of the court. *State v. Hensley*, 716 N.E.2d 71, 76 (Ind. Ct App. 1999).

7. The objective of statutory interpretation is to determine and effect legislative intent. *Id.*

8. Courts must consider the goals of a statute and the reasons and policy underlying the statute's enactment. *Id.*

9. The statute must be examined and interpreted as a whole. *Id.*

10. While a court is not bound by an agency's interpretation of a statute, it should give great weight to the interpretation of an agency charged with the enforcement of the statute in light of its expertise in its given area. *Natural Resources Commission of Indiana Dept. of Natural Resources v. Porter County Drainage Board*, 576 N.E.2d 587, 589 (Ind. 1991); *State Employees Appeals Commission v. Barclay*, 695 N.E.2d 957, 959-60 (Ind. Ct. App. 1998).

B. Golden Rule's Policies Cannot Have Indeterminate Exclusions

11. The insurance policy in question is an out-of-state association group policy issued to an association in Illinois.

12. The issuance of certificates to members of the association in Indiana is subject to the Indiana Insurance Statutes, specifically, Ind. Code § 27-8-5-16.5, and thus are subject to the authority of the Indiana Department of Insurance and its Commissioner who have the power and duty to enforce, administer and execute the provisions of Indiana's insurance statutes. Ind. Code §§ 27-1-1-1, -2.

13. Pursuant to Ind. Code § 27-8-5-16.5(c)(3)(A)(i), a certificate may be delivered into the State of Indiana if it contains provisions that are substantially similar to the provisions required by Ind. Code § 27-8-5-19.

14. A preexisting condition is a medical condition which exists prior to the first date of coverage.

15. Insurance is generally for unknown risks.

16. Insurers are motivated to exclude or limit coverage for preexisting conditions in order to discourage people with known medical problems who need or will need expensive treatment from signing up for insurance just to cover the known problem.

17. These exclusions prevent the insurance carrier from having to expend the monies to pay for treatment that is sure to occur.

18. In contrast, regulators and policy-makers are concerned that health insurance should not just be for the healthy and have limited how long, and how far back, insurers may exclude coverage for preexisting conditions.

19. In Indiana such limitations for group policies may be found in Ind. Code § 27-8-5-19(c)(5).

20. Similar limitations for individual policies may be found at Ind. Code § 27-8-5-2.5.

21. Both statutes limit the time for which benefits may be excluded to twelve (12) months (or eighteen (18) months for late enrollees to group policies).

22. The provisions found in Ind. Code § 27-8-5-19(c)(5) indicate the legislature's intent to limit the exclusions allowed for preexisting conditions in group policies. That provision states:

(5) A provision specifying any additional exclusions or limitations applicable under the policy with respect to a disease or physical condition of a person that existed before the effective date of the person's coverage under the policy and that is not otherwise excluded from the person's coverage by name or specific description effective on the date of the person's loss. An exclusion or limitation that must be specified in a provision under this subdivision:

(A) may apply only to a disease or physical condition for which medical advice, diagnosis, care, or treatment was received by the person, or recommended to the person, during the six (6) months before the enrollment date of the person's coverage; and

(B) may not apply to a loss incurred or disability beginning after the earlier of:

(i) the end of a continuous period of twelve (12) months beginning on or after the enrollment date of the person's coverage; or

(ii) the end of a continuous period of eighteen (18) months beginning on the enrollment date of the person's coverage if the person is a late enrollee.

23. This provision indicates the legislature's intent to limit the period for which an insurer of a group policy may exclude coverage for a member of that group.

24. If coverage is offered to the group as a whole, individuals may not be excluded from coverage for greater than twelve (12) months (or eighteen (18) months if the person covered is a late enrollee).

25. If an insurer does not wish to take the risk of paying for certain medical expenses for all covered persons, then the coverage may be excluded from the entire policy.

26. A group policy is different from an individual policy. In a group policy the risk should be spread over the group. This allows for coverage even if there have been prior medical problems which make affordable coverage a problem.

27. The Department's interpretation of Ind. Code § 27-8-5-19(c)(5) is consistent with the plain meaning of the wording of the statute and gives effect to the legislative intent to provide affordable insurance coverage to those most in need of it.

B. Rate Changes are not on a "File and Use" Basis

28. Individual health insurance policies are subject to Ind. Code § 27-8-5-1, which creates a "file and approve" process.

29. No policy of accident and sickness insurance may be issued or delivered to any person in Indiana, nor may any application, rider or endorsement be used in connection with an accident and sickness policy until a copy of the form of the policy and of the classification of risks and the premium rates have been filed with the Commissioner. Ind. Code § 27-8-5-1(b).

30. The policy, application, rider or endorsement used in connection with a policy of accident and sickness insurance may not be issued until thirty (30) days after the filing or until the Commissioner has given written approval, whichever occurs first. Ind. Code § 27-8-5-1(c).

31. If, within the thirty days, the Commissioner disapproves the filing, the form may not be used. Ind. Code § 27-8-5-1(e).

32. If the Commissioner disapproves the form, the reasons for the disapproval must be given and the insurer must be granted a hearing within twenty (20) days. *Id.*

33. The Commissioner's final decision is subject to judicial review. Ind. Code § 27-8-5-1(g).

34. The grounds for which a filing may be disapproved are contained in Ind. Code § 27-8-5-1(d).

35. One ground is that the benefits provided are unreasonable in relation to the premium charged, i.e., the rates are unreasonable. Ind. Code § 27-8-5-1(d)(1).

36. Under this statute, the Commissioner is granted thirty (30) days to disprove rates filed.

37. The delay is a reasonable delay to allow the Commissioner to determine if the changed rates are reasonable.

38. To read Ind. Code § 27-8-5-1 as a "file and use" statute negates the Commissioner's ability to deny a change because the rates are unreasonable and negates the provisions of Ind. Code § 27-8-5-1(d)(1).

39. Statutes should be construed so as to give meaning to all of the statute. *State v. Hensley*, 716 N.E.2d at 76.

40. A court cannot presume that the legislature intended that a statute was to be applied in an illogical manner or to contain useless provisions, the effect of which could have been easily avoided. *State v. Hensley*, 716 N.E.2d at 76-77.



41. The legislature did not intend Ind. Code § 27-8-5-1 to be a "file and use" statute. Had it so intended, it could have written the statute without the waiting period and presumption of approval after thirty (30) days.

42. Indiana Code § 27-8-5-1 is a "file and approve" and not "file and use" statute.

43. The Commissioner's interpretation of Ind. Code § 27-8-5-1 is correct.

44. All Conclusions of Law may be deemed Findings of Fact.

### JUDGMENT

IT IS THEREFORE ORDRED, ADJUDGED AND DECREED that Plaintiff's Motion for Judgment on the Pleadings is hereby denied. Judgment is entered for the Defendant, on the Pleadings, as no genuine issue of material facts remain for trial.

Dated: 10/16/00

  
Judge, Marion Superior Court Room 4

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